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Joint written statement* submitted by France Libertes: Fondation Danielle Mitterrand, the Society for Threatened Peoples, non-governmental organizations in special consultative status; the Indian Council of South America (CISA), International Educational Development, Inc., Survival International Ltd., non-governmental organizations on the roster

The Secretary-General has received the following written statement which is circulated in accordance with Economic and Social Council resolution 1996/31.

[14 February 2014]

* This written statement is issued, unedited, in the language(s) received from the submitting non-governmental organization(s).

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Large dams and violations of indigenous peoples' rights in the Brazilian Amazon*

The systematic violations of indigenous and tribal peoples' rights in the planning, licensing and construction of large hydroelectric dams in the Amazon region, previously denounced by NGOs during sessions of the Human Rights Council (March and September 2012[1]) – as well as in numerous petitions submitted by Brazilian and international civil society organizations to UN rapporteurs, the Office of the United Nations High Commissioner of Human Rights (OHCHR)[2], the Inter-American Commission on Human Rights[3] and the International Labor Organization (ILO)[4] – have not only continued unabated, but intensified, together with their devastating human and environmental consequences. This statement provides a brief update on violations of indigenous and tribal peoples' rights – particularly the right to Free, Prior and Informed Consultation and Consent (FPIC) – in the cases of the Belo Monte Hydroelectric Complex on the Xingu River, and in the neighboring basin on the Tapajós river, the focus of the Brazilian government's current plans for expansion of large dam construction in the Amazon.[5]

Belo Monte

The Belo Monte Hydroelectric Complex, under construction since mid-2011 in the heart of the Brazilian Amazon, is arguably the world's most notorious example of a mega-dam project that involves blatant disregard for both national legislation and international agreements concerning human rights and environmental protection. In this regard, Belo Monte has been the object of no less than twenty Civil Action Lawsuits filed by the Federal Public Prosecutors' Office (Ministério Público Federal) since 2001.

One of the key lawsuits against Belo Monte concerns the approval of a legislative decree (Decreto Legislativo n°788/2005) by Brazil's National Congress that authorized project construction, despite a lack of prior consultations with affected indigenous and tribal peoples, as determined by article 231 of the Federal Constitution and ILO Convention 169. The Federal Public Prosecutors' Office (MPF) filed a lawsuit in 2006, demanding suspension of Decree 788 and compliance with the constitutional mandate concerning prior consultations with indigenous peoples whose territories and livelihoods are threatened by construction of Belo Monte. Finally, on August 13, 2012, a federal appeals court (TRF-1) ruled on the merits of the case, suspending Decree 788 and the construction of Belo Monte. In a matter of days, outgoing Chief Justice of the Supreme Court (STF), Carlos Ayres Britto, upon request from the Attorney General's Office (AGU), unilaterally suspended the court decision, ignoring arguments concerning the case's merit and postponing a final judgment by the Supreme Court.

Tapajós

The Tapajós basin, located to the west of the Xingu, is currently the main focus of the Brazilian government's ambitious dam construction plans for the Amazon. Projects include three large dams on the main stem of the Tapajós river; along its main tributaries, four dams are slated for construction on the Jamanxim River, five dams in the Teles Pires River (two of which are already under construction) and 17 large dams are proposed for the Juruena River (in addition to over 80 small and medium hydroprojects – PCHs).

Dam construction in the Tapajós basin is on a collision course with indigenous peoples and their territories, as well as other protected areas. Political decisions concerning which dams will be built are based on basin inventories carried out by the Ministry of Mines and Energy and private construction companies that systematically underestimate (or simply ignore) social and environmental consequences of individual projects, as well as cumulative impacts of dam cascades

[1] A/HRC/19/NGO/72 and A/HRC/21/NGO/75
[2] http://www.aida-americas.org/sites/default/files/refDocuments/LargeDams_UPRJointSub_Brazil_2nd_Cycle.pdf
[3] http://www.aida-americas.org/sites/default/files/refDocuments/Medida%20Cautelar%20UHE%20Belo%20Monte%20Brasil.pdf
[4] http://util.socioambiental.org/inst/esp/consulta_previa/sites/util.socioambiental.org.inst.esp.consulta_previa/files/0808-ComunicaçãoInd%C3%ADgena169OITEspañol.pdf
[5] See also: http://www.internationalrivers.org/resources/hydroelectric-dams-in-pará-and-two-serious-legal-offenses-omission-and-leniency-8179

and related mega-projects in the mining, transportation and agribusiness sectors. Political decisions are made in absence of processes of FPIC among indigenous peoples and other threatened traditional populations – despite requirements of the Brazilian Constitution and international agreements, such as ILO Convention 169.

As demonstrated by the cases of the Teles Pires and São Manoel dams, that directly impact the Kayabi, Apiaká and Munduruku indigenous peoples living along Teles Pires river, the planning and licensing of dams in the Tapajós basin has also been characterized by strong-arming of federal institutions responsible for environmental protection (IBAMA) and indigenous peoples' rights (FUNAI), with political decisions countering the opinions of technical staff.

When the Federal Public Prosecutors Office has filed civil action lawsuits regarding lack of FPIC with indigenous peoples in the planning and licensing of the Tapajós dams, as well as other illegalities (e.g. lack of analysis of cumulative impacts of dam cascades, as determined by Brazilian environmental law, incomplete indigenous components of environmental impact assessments), the response of the Brazilian government has been to pressure Chief Justices of federal courts to suspend favorable decisions, using a legal artifice known as "Suspensão de Segurança" (also used by STF Chief Justice Ayres Britto in the Belo Monte case described above).

In Brazil, the Suspensão de Segurança ("Security Suspension") is a legal artifice dating back to the military dictatorship that allows Chief Justices, upon request from the Attorney General's Office (AGU) to suspend court decisions based on supposed threats to national security and the country's "social and economic order".[6] Such suspensions have increasingly been applied to decisions favorable to lawsuits filed by MPF against violations of human rights and environmental legislation in the planning and licensing of hydroelectric dams. Generic arguments used by AGU and Chief Justices to justify the use of the "suspensão de segurança" is that if all projected dams are not constructed, Brazil will face imminent blackouts and economic disaster. Such decisions lack technical arguments, while ignoring a growing body of literature concerning the enormous opportunities for Brazil in terms of energy efficiency and truly sustainable renewables that could drastically reduce the need for new hydroelectric dams.[7] According to current legislation, "security suspensions" remain in effect until the last possible phase of appeals (transito em julgado), allowing the continuation of dam construction and situations of a fait accompli, while gross violations of human rights and their tragic consequences are ignored.

When indigenous peoples of the Xingu and Tapajós have protested in defense of their rights, the response of the Brazilian government has not been to dialogue, but rather engage in acts of intimidation, criminalization and repression, while attempting to coopt leaders of resistance movements. In the case of Belo Monte, the National Guard is now engaged as a private security force for the Norte Energia (NESA) dam consortium, while attempting to criminalize leaders of the Xingu Vivo movement and indigenous peoples. In 2013, the administration of President Dilma Rousseff launched an elaborate military operation known as "Operação Tapajós", dispatching heavily-armed National Guard and Federal Police troops to 'escort' teams conducting technical studies within traditional territories of the Munduruku indigenous people, in preparation for mega-dams about which they were never consulted, that would profoundly affect their territories and livelihoods. At the same time, the federal government has repeatedly questioned the legitimacy of Munduruku movement leaders involved in resistance to the planned Tapajós dams.

A tactic often employed by dam proponents in the government and private sector is to deny the existence of downstream impacts on indigenous peoples and their territories, largely as a means to justify the absence of processes of FPIC. An increasingly common practice, especially within the Ministry of Mines and Energy, is to attempt to confuse and conflate processes of FPIC and "public hearings" required by environmental legislation. With the possible exception of FUNAI, there has been a refusal within the federal government to acknowledge situations in which the consent of indigenous peoples should be prerequisite for project approval (e.g. mega-infrastructure and mining enterprises with enormous potential impacts on indigenous livelihoods and rights). Finally, a growing trend among government agencies is to promote 'consultations' among indigenous peoples on large dams and other mega-projects that have already been politically approved.

[6] See also : http://www.icjp.pt/sites/default/files/papers/o_terror_juridico_completo.pdf

[7] See, for example: The Brazilian Electrical Sector and Sustainability in the 21st century: Opportunities and Challenges (2012) http://www.internationalrivers.org/node/7525

Recommendations

Our organizations respectfully appeal to the Special Rapporteur on Human Rights of Indigenous Peoples, the Special Rapporteur on the Promotion of Truth, Justice, Reparation, and Guarantees of Non-recurrence, the Special Rapporteur in the field of Cultural Rights, the Special Rapporteur on the Independence of Judges and Lawyers and the Independent Expert on Minority Issues

- to investigate how the utilization of the "Security Suspension" (Suspensão de Segurança) by the Brazilian government and chief justices in lawsuits concerning large dams and other proposed mega-projects constitutes an impediment to compliance with international agreements concerning human rights, including the right to FPIC among indigenous peoples and other traditional populations, as determined by ILO Convention 169, the Inter-American Human Rights System and UNDRIP. With support from independent Brazilian and international experts, investigations should include field visits to interview affected communities, leaders of social movements, NGOs, federal public prosecutors (MPF) and other legal experts, including federal judges whose decisions have been systematically overturned, among others.

- to organize a special event to discuss this urgent issue, including conclusions and recommendations of investigations by special rapporteurs and experts, with participation of key parties (e.g. indigenous and tribal leaders, social movements, NGOs, MPF, AGU/PR, federal judges and independent legal experts).

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*Alianza Sistema de humedales Paraguay Paraná, Articulação de Mulheres Brasileiras (AMB), Articulação dos Povos Indígenas do Brasil(APIB), Asociación Interamericana para la Defensa del Ambiente (AIDA), Associação Agroecológica Tijupá, Centro de Estudos e Defesa do Negro do Pará (CEDENPA), Coordenação das Organizações Indígenas da Amazônia Brasileira (COIAB), Fórum da Amazônia Oriental – Rede FAOR, Fórum Carajás, Fórum de Mulheres da Amazônia Paraense (FMAP), Fundación M'Biguá – Argentina, Instituto Socioambiental (ISA), Instituto Humanitas de Belém/PA, Instituto Madeira Vivo (IMV), Instituto Transformance, Justiça Global, Movimento e Articulação de Mulheres do estado do Pará (MAMEP), Movimento Articulado de Mulheres da Amazônia (MAMA), Movimento Xingu Vivo Para Sempre (MXVPS), Movimento Tapajós Vivo, Projeto Rios de Encontro, Rede Brasileira de Arteducadores, Sociedade Paraense de Defesa dos Direitos Humanos (SDDH), Ação por um Mundo Solidário (ASW, Germany), Amazon Watch (USA), Amnesty International France, Association of International Lawyers, Bianca Jagger Human Rights Foundation, International Rivers (USA), KoBra - Kooperation Brasilien e.V (Germany), Pro REGENWALD (Germany), Regenwald-Institut (Instituto Floresta Tropical) (Germany), Rettet den Regenwald e.V. (Germany) NGO(s) without consultative status, also share the views expressed in this statement.